

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 97-0386****Adjusted Gross Income Tax
Calendar Years 1993, 1994, 1995**

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ISSUE(S)**I. Adjusted Gross Income Tax – Non-Business vs. Business Income**

Authority: IC 6-3-1-20; 45 IAC 3.1-1-29

Taxpayer protests the auditor's reclassification of certain items of income from non-business income to business income.

STATEMENT OF FACTS

The taxpayer owns and operates fifty-two full service restaurants through the midwestern and southern United States. The taxpayer offers a full course menu as well as beer, wine and liquor sales. Its corporate headquarters are located in Florida. An adjustment was made in the audit report to reclassify certain items of income (the repurchase/redemption of debentures, the sales of miscellaneous stocks, and the receipts from leasing a company-owned restaurant building after it was closed) from that of non-business to business income.

I. Adjusted Gross Income Tax – Non-Business vs. Business Income**DISCUSSION**

At issue is whether certain types of income are considered to be non-business or business income. As stated by the taxpayer, the non-business income classification should be afforded to the following types of income: (1) gains on the repurchase of bonds, (2) sales of miscellaneous stocks and bonds, and (3) rental income.

As stated by administrative rule 45 IAC 3.1-1-29, “‘Business Income’” is defined in the Act as income from transactions and activity in the regular course of the taxpayer's trade or business, including income from tangible and intangible property if the acquisition, management, or disposition of the property are integral parts of the taxpayer's regular trade or business. Nonbusiness income means all income other than business income. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is ‘business income’ or ‘nonbusiness income’ is the identification of the transactions and activity which are the elements of a particular trade or business”.

The taxpayer has not provided the Department with any information to support their contention other than the statement that they feel the aforementioned receipts represent non-business income. The Department is not persuaded by the taxpayer’s argument.

FINDING

The taxpayer’s protest is respectfully denied.